Better Marketing

Division of Marketing and Marketing Agreements

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CIRCUIT COURT RULES AGREEMENTS NOT AFFECTED BY SUPREME COURT'S PRODUCTION-CONTROL STAND

Federal District Court Elisha H. Brewster's ruling of July 23, 1936, that the Supreme Court's decision in the *Hoosac Mills case* invalidating production-control provisions of the Agricultural Adjustment Act also invalidated the marketing agreement and order provisions of that act, was reversed in a unanimous opinion handed down June 16, by the Circuit Court of Appeals for the First Circuit.

The circuit court's ruling was made in connection with an appeal from the lower court's decision which, in turn, arose out of efforts of the Agricultural Adjustment Administration to obtain an injunction against 28 handlers of milk operating in the Boston, Mass., marketing area, who are alleged to have violated the provisions of an order issued by the Secretary of Agriculture for the purpose of regulating the handling of milk in that market.

Not Related to Production

In its decision the circuit court maintained that the marketing agreement and order provisions of the Agricultural Adjustment Act had no "direct relation to the control or regulation of agricultural production, but solely to the marketing of milk and certain fruits bought and sold in interstate commerce—a matter within the exclusive control of Congress, and not of the States." The circuit court expressed the opinion that "the district court erred in reaching the conclusion that it was without the jurisdiction to pass upon the questions raised by the bill" of complaint against the handlers filed by the Agricultural Adjustment Administration and ordered the case against the handlers returned to the lower court for trial.

The opinion of the circuit court pointed out that the production-control and processing-tax provisions of the Agricultural Adjustment Act, which were involved in the *Hoosac Mills case*, were not involved in the case which the Government brought against the handlers alleged to have been violating the provisions of the Boston milk order. In this connection, the court said:

Marketing Provisions "Separate"

"It is true that the ultimate purpose of the act was to increase the purchasing power of farmers, but that purpose was to be accomplished in two distinct ways—one, by the provisions for the limitation and control of farm production, and the other, by the provisions here in question under which the marketing order was made regulating the purchase and sale of milk in interstate commerce. The sections authorizing these two methods of procedure are not mutually dependent but are wholly distinct and separate. It was not the intention of Congress that if one of the methods provided was held invalid, the other should fail on that account (sec. 14). Even section 2, subdivision 1, declaring the policy of Congress in the enactment of the law, points out the two methods by which its purpose of improving the purchasing power of the farmer was to be brought about: (1) The balancing of production and consumption by restricting the production of farm products and (2) by improving marketing conditions for such products."

The circuit court's ruling on the separability of the marketing agreement provisions of the Agricultural Adjustment

(Continued on p. 2)

MILK MARKETING PLAN IN BOSTON CONTINUES

Order Reinstated Following Reversal of Lower Court Decision; Hearings Held on Amendments

An order for handlers of milk in the Greater Boston, Mass., marketing area, which has been in suspension for nearly a year because of an adverse decision in a Federal district court, has been reinstated in view of a recent circuit court decision which unanimously reversed the decision of the lower court.

A formal notice reinstating the order was signed June 25 by the Secretary of Agriculture. Provisions of the order which require handlers to file reports of their operations with the market administrator, in charge of administering the marketing program, became operative July 1. Other provisions relating to minimum prices which handlers would be required to pay producers and to the pooling plan under which payments to producers are prorated become operative August 1.

The order is being reinstated after having been in suspension since August 1, 1936. A ruling by the Federal district court in Boston held that the marketing

(Continued on p. 2)

MILWAUKEE MILK MARKET SURVEY MADE AVAILABLE

Report Reveals Duplication of Services and Variations in Costs; Centralized Milk Distribution Analyzed

The feasibility of centralizing milk distribution in the city of Milwaukee, Wis., is considered in a publication entitled "A Survey of Milk Marketing in Milwaukee", prepared by the Dairy Section of the Agricultural Adjustment Administration.

The publication is divided into four parts, the first three of which are concerned with factual data on the Milwaukee milk market, including (1) general economic characteristics of the market, (2) market distribution, and (3) an appraisal of the present system of milk distribution. The fourth part of the publication presents details of the organization and operation of a proposed central plant and a comparison of this plant with the present system of milk distribution.

Services Duplicated

Among the various distribution factors studied was that of duplication in delivery service. An analysis of duplication in delivery service, other than that indicated by mileage travel in relation to miles of street in the city of Milwaukee, shows the following:

"In 1,020 selected blocks of the city an average of 6.8 companies delivered in each block, with two or more companies serving every block but one. In an extreme case, 17 companies were found to be competing in the same block.

"In 201 blocks studied in connection with consumption, deliveries were made by an average of 7.6 distributors per block.

"None of the 25 wards (1930 basis) was served by less than nine distributors. Twenty distributors were found to be competing in wards 12 and 25. Eight or more of the 25 distributors had customers in 21 or more wards of the city, with at least 2 of these companies delivering in every ward. Only one company concentrated its deliveries within a single ward."

In connection with this phase of the study, the publication says:

"Since the delivery data were available only by company totals and not by specific routes of each company, it was impossible to show variations in route characteristics. Some routes were undoubtedly well arranged; others probably were poorly organized. On the basis of company averages, it was found that the larger companies had, in general, the better organized routes, as evidenced by low mileage and heavy

(Continued on p. 4)

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Better Marketing is issued as a means of communicating to workers and cooperators of the Division of Marketing and Marketing Agreements information relative to the Division's activities under the Agricultural Adjustment Act and related Acts

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CIRCUIT COURT DECISION

(Continued from p. 1)

Act came after Congress had reenacted and modified these provisions by passing the Agricultural Marketing Agreement Act of 1937, approved by the President on June 3.

History of Case

When the case against the 28 handlers was brought before the lower court in the spring of 1936, briefs supporting the Federal Government's efforts to obtain compliance with the Boston milk order were filed with the court by the Governors of Vermont, New Hampshire, and Maine; by the Commissioner of Agriculture for Vermont; by the State Milk Control Boards for New Hampshire and Maine; and by farm organizations and cooperatives representing producers who supplied the Boston market with more than 75 percent of its milk.

All of the supporting briefs emphasized the following points:

1. The Federal milk marketing program, inaugurated under the Agricultural Adjustment Act in November 1933, improved milk marketing conditions in the Boston market and increased returns to New England farmers.

2. Because of violations of the order, the Boston milk market was becoming demoralized to an extent which threatened to return New England's dairy industry to the chaotic conditions which had existed before the program went into effect.

3. Because interstate commerce is involved, the New England States by themselves could not maintain a stable price for milk sold in the Boston market and, therefore, the aid provided by the Federal order was essential to the general welfare of New England.

The Boston marketing area is supplied with milk by approximately 18,000 New England farmers. It is estimated that 52 percent of the milk and cream received in the Boston market comes from Vermont, 14 percent from Maine, 13 percent from Massachusetts, 13 percent from New Hampshire, 7 percent from New York, and the remainder from Connecticut and other States. Thus, more than 86 percent of all the milk and cream received in the Boston market originates outside the State of Massachusetts.

Market Became Chaotic

Following Judge Brewster's adverse decision, the Agricultural Adjustment Administration was forced to suspend the order for the Boston market. Suspension became effective August 1, 1936, and the price of milk paid to producers dropped 1 cent per quart. The order has been inoperative since then and reports indicate that prices received for milk by producers have varied considerably, tending toward lower levels. Current reports indicate that milk is being bought by handlers from producers for as low as 4½ cents per quart, compared with a producer price of 7¼ cents per quart, just before the order was suspended.

While prices paid producers during the past year, through which the Federal milk marketing program has been inoperative, have declined to as low as 4½ cents per quart compared with 7¼ cents last year when the program was in effect, the margin which the Boston area milk distributors have received from milk sales to consumers has increased. Indications are that on the basis of prices paid producers while the order was in effect last year, the margin to milk distributors from sales to consumers was 5¾ cents per quart. Reports indicate that at the present time the margin of some distributors may be as high as 7½ cents per quart.

Deliveries of Surplus Dry Skim Milk Being Made for Relief Use

A total of 10,304,900 pounds of dry skim milk, bought by the Agricultural Adjustment Administration in connection with surplus-removal programs designed to improve marketing conditions and prices to milk producers, is now in the process of being delivered by manufacturers to whom awards were made on the basis of bids. The dry skim milk, manufactured by the roller process, is being utilized for relief purposes.

Of this total, 3,264,900 pounds of dry skim milk were bought through awards made June 15. This quantity is being supplied by 12 bidders. The bidders, and the number of pounds awarded each, are as follows: Abbott's Dairies, Inc., Cameron, Wis., 200,000 pounds; Challenge Cream & Butter Association, Los Angeles, Calif., 262,500 pounds; Dairymen's League Cooperative, Inc., New York, N. Y., 720,900 pounds; Grand Ledge Creamery Co., Grand Ledge, Mich., 80,100 pounds; Lansing Dairy Co., Lansing, Mich., 120,150 pounds; Orrville Milk Condensing Co., Orrville, Ohio, 80,000 pounds; Page Dairy Co., Toledo, Ohio, 320,000 pounds; Producers' Creamery Co., Springfield, Mo., 240,300 pounds; Roberts Dairy Co., Omaha, Nebr., 200,000 pounds; Supplee-Wills-Jones Milk Co., Philadelphia, Pa., 720,650 pounds; Twin Cities Milk Producers' Association, St. Paul, Minn., 240,300 pounds; Land O'Gold Milk Products Co., Chico, Calif., 80,000 pounds.

The prices on which these awards were made varied from 5.5 cents per pound to 6.25 cents per pound, f. o. b. shipping points. Deliveries are being

(Continued on p. 3)

La Porte County Milk Marketing Program Considered at Hearing

A proposed marketing agreement and order for handlers of milk in the La Porte County, Ind., marketing area were considered at a public hearing held in La Porte on June 28.

A hearing on the program under the agreement and order was requested by the Indiana Milk Control Board and by producers and handlers selling milk in the marketing area.

The marketing agreement and order provide for the classification of milk into three classes according to its use; for minimum prices to producers for milk in each use classification; and for payments to producers through individual handler pools. Administration of the program would be through a market administrator.

Minimum prices which handlers would be required to pay producers for milk in each of the three classifications are established in the proposed agreement and order as follows:

For class 1 milk, $2.60 per hundredweight at the handler's plant.

The minimum prices for class 2 and class 3 milk would be calculated by the market administrator on the basis of formulas. The class 2 price would be arrived at by multiplying by 4 the average price per pound of 92-score butterfat at wholesale in the Chicago market as reported by the United States Department of Agriculture for the delivery period during which the milk is purchased, and adding 30 percent of the result. The class 3 price would be arrived at by multiplying by 4 the average price per pound of 92-score butter at wholesale on the Chicago market as reported by the United States Department of Agriculture for the delivery period during which the milk is bought, and adding 10 percent of the result.

On the basis of reports received from handlers, the market administrator would, for each delivery period, compute and announce for each handler uniform prices per hundredweight of milk delivered to the handler by producers.

BOSTON MILK PLAN

(Continued from p. 1)

agreement and order provisions of the Agricultural Adjustment Act were also invalidated when the Supreme Court nullified on January 6, 1936, the production control provisions of the act. A decision rendered nearly 3 weeks ago by the circuit court of appeals reversed the lower court's ruling.

Amendments Considered

Public hearings to consider amendments to the reinstated order were held June 30 at St. Johnsbury, Vt.; July 1 at Boston; and July 2 at Augusta, Maine. The amendments are designed to modify the provisions of the order to meet the chaotic market conditions that have developed since suspension of the program in 1936.

(Continued on p. 3)

BOSTON MILK PLAN

(Continued from p. 2)

The program under the order would continue to provide for (1) the classification of milk into two classes on the basis of its use by handlers; (2) the establishment of minimum prices which handlers would be required to pay producers for milk in each use classification; and (3) the establishment of a market-wide pool to assure producers uniform return for milk sold to handlers. The amendments would eliminate the base-rating provisions contained in the existing order.

Milk sold by producers to handlers would be classified in two classes, according to use, as follows:

1. *Class 1 milk.*—All milk sold or distributed as milk, chocolate milk, or flavored milk, and all milk not specifically accounted for as class 2 milk.

2. *Class 2 milk.*—All milk specifically accounted for (*a*) as being sold, distributed, or disposed of other than as milk, chocolate milk, or flavored milk; and (*b*) as actual shrinkage within reasonable limits.

Minimum Prices

Under the terms of the amendments as considered at the hearings, handlers would pay associations of producers for class 1 milk containing 3.7 percent butterfat the following minimum prices:

1. For class 1 milk delivered from the plant of an associatioin of producers to a handler's plant located not more than 40 miles from the State House in Boston, $3.31 per hundredweight.

2. For class 1 milk delivered from the plant of an association of producers to a handler at a railroad delivery point not more than 40 miles from the State House in Boston, $3.26 per hundredweight.

Handlers would pay the following minimun prices for class 1 milk containing 3.7 percent butterfat bought directly from producers:

1. For class 1 milk delivered from a producer's farm to a handler's plant located not more than 40 miles from the State House in Boston, $3.19 per hundredweight.

2. For class 1 milk delivered from a producer's farm to a handler's plant located more than 40 miles from the State House in Boston, $3.01 per hundredweight, less an amount per hundredweight equal to the freight from the railroad shipping point of the handler's plant to the handler's railroad delivery point in the marketing area. Handlers would be required to calculate the freight to be deducted according to applicable rail tariffs for the transportation in car lots of milk in 40-quart cans, assuming each can to contain 85 pounds of milk.

The minimum price for class 2 milk which would be paid to producers by handlers would be calculated by the market administrator according to a formula prescribed in the amendments, and based principally on the current price of bottling-quality cream in the Boston market. Under this formula producers would receive approximately $1.40 per hundredweight for their class 2 milk at present cream prices.

Reports From Handlers

Handlers would file with the market administrator reports on purchases and receipts of milk from producers and on the utilization of this milk. On the basis of these reports, the market administrator would compute for each delivery period the value of milk sold or used by each handler. From this, the market administrator would compute and announce the uniform prices which all handlers would pay producers for milk delivered during the delivery period.

To enable the market administrator to render producers such marketing services as providing market information, verifying weights, sampling and testing of milk bought by handlers from producers, each handler would deduct and pay to the market administrator an amount not exceeding 2 cents per hundredweight from payments made direct to producers on all milk delivered to the handler during each delivery period. Deductions from payments to producers who are members of a cooperative association rendering these services would be paid to the cooperative of which the producers are members.

Costs of administering the program would be borne by handlers on a prorata basis. Each handler would pay to the market administrator not more than 2 cents per hundredweight on all milk handled during a delivery period. Each handler which is a cooperative association of producers would pay the prorata share of expense of administration only on that milk actually received from producers at a plant of such an association.

Industry Sought Hearings

The modified program was developed through conferences with representatives of cooperatives, independent producer groups, milk distributors, and the State milk control boards of Vermont, Maine, and Massachusetts.

The public hearings were requested by the industry, including the following cooperatives: New England Dairies, Boston, Mass.; United Farmers' Cooperative Creamery, Morrisville, Vt.; Milton Cooperative Dairy Corporation, Milton, Vt.; Manchester Dairy System, Manchester, N. H.; Cabot Farmers' Cooperative Creamery, Cabot, Vt.; Caledonia County Cooperative Creamery, West Barnet, Vt.; and Kenduskeag Valley Cooperative, Bangor, Maine. These cooperative groups are reported to represent producers from whom more than half of the milk in the Boston market is received.

SURPLUS DRY SKIM MILK

(Continued from p. 2)

made from Wisconsin, Michigan, Ohio, Missouri, Nebraska, Minnesota, California, Maryland, and New York.

Awards to furnish 7,040,900 pounds of the total now being delivered were announced June 24. This quantity of milk is being supplied by 14 bidders on the basis of awards made as follows: Abbott's Dairies, Inc., Cameron, Wis., 480,000 pounds; Arden Farms, Inc., Los Angeles, Calif., 120,000 pounds; Challenge Cream & Butter Association, Los Angeles, Calif., 600,000 pounds; Consolidated Dairy Products Co., Seattle, Wash., 1,440,000 pounds; Dairymaid Creameries, Ltd., Oakland, Calif., 540,000 pounds; Golden State Co., Ltd., San Francisco, Calif., 360,000 pounds; Land O'Lakes Creameries, Inc., Minneapolis, Minn., 600,000 pounds; Pet Milk Co., St. Louis, Mo., 560,000 pounds; Pet Milk Sales Corporation, Salt Lake City, Utah, 180,000 pounds; Roberts Dairy Co., Omaha, Nebr., 400,000 pounds; Rochester Dairy Co., Rochester, Minn., 120,000 pounds; Twin Ports Cooperative Dairy Association, Superior, Wis., 240,000 pounds; United Milk Products Co., Cleveland, Ohio, 160,000 pounds; and Ward Dry Milk Co., St. Paul, Minn., 1,240 000 pounds.

Deliveries are being made from California, Oregon, Idaho, Washington, Wisconsin, Minnesota, Michigan, Nebraska, Illinois, Pennsylvania, and New York, at prices ranging from 6.5 to 7.18 cents per pound, f. o. b. shipping point.

Control Board Named for Walnut Marketing Agreement and Order

Members and alternates have been named to serve on the control board in charge of administering the marketing agreement and order regulating the handling of walnuts grown in California, Oregon, and Washington.

The selections were made by the Secretary of Agriculture on the basis of nominations submitted to him as provided for in the agreement and order. The members and the alternates named succeed themselves on the control board. They are:

H. C. Sharp, Saticoy, Calif., member, and A. J. McFadden, Santa Ana, Calif., alternate; Walter Rothchild, San Francisco, Calif., member, and A. Franken, San Francisco, Calif., alternate; C. Thorpe, Los Angeles, Calif., member, and W. T. Webber, Los Angeles, Calif., alternate; Neil Harrison, Walnut Creek, Calif., member, and Philip Bancroft, Walnut Creek, Calif., alternate; A. W. Porter, Jr., Stockton, Calif., member, and Frank A. Leib, San Jose, Calif., alternate; R. W. Miller, Linden, Calif., member, and W. Charles Anderson, Linden, Calif., alternate; F. C. Riggs, Dundee, Oreg., member, and R. A. Duncan, Eugene, Oreg., alternate; and C. Trunk, Dundee, Oreg., member, and John E. Trunk, Newberg, Oreg., alternate.

Four of the members of the board represent the California Walnut Growers' Association, a producer cooperative, with two of these representing the packing phase of the industry and two the producer interest. Of the other four, one represents independent packers in California, one represents growers selling to independent packers in California, one represents growers in Oregon, and one represents packers in Oregon. The eight members named will make nominations for a ninth member, who will be appointed later.

The walnut industry in California, Oregon, and Washington has had a marketing-agreement program in effect since the latter part of 1933. Under the provisions of this program the industry is in position to improve marketing conditions through the regulation of supplies marketed.

MILWAUKEE MILK SURVEY

(Continued from p. 1)

concentration of customers per route. However, the delivery costs of these companies were relatively high, compared with those companies which apparently operated under less favorable route conditions, due in part to higher wage costs."

Centralized Distribution

Summarizing the feasibility of centralizing milk distribution, the publication states:

"Detailed plans were worked out for a unified system of processing and delivery large enough to service the consumption needs of the city. Under this noncompetitive system, which presumably would be operated as a municipal enterprise, country assembly of milk would be introduced into the Milwaukee market through the establishment of five country receiving stations. While most of the processing functions would be performed at the central plant located in the city, cream, ice-cream mix, and powdered skim milk would be prepared at the receiving stations. Wholesale and retail deliveries would be made from the central plant in either one-man, two-man, or three-man motor trucks, depending upon the characteristics of the delivery routes.

"Through the operations of this system, which would involve an investment of about $5,100,000, the designers estimated that prices to producers could be increased and prices to consumers decreased, partly because processing costs could be reduced, but mainly because delivery costs could be lowered. It was estimated that producers could be paid an increase of 14 cents per hundredweight for their milk, on the basis of 1934 price levels, while the wholesale and retail price of milk to consumers could be reduced 2 cents per quart. Prices of cream and ice cream also could be lowered. On a unit-cost basis it was estimated that operating costs would amount to about 1.65 cents per quart of milk handled, as compared with 1.89 cents for the firm with lowest operating costs in the market but whose business, however, was predominantly wholesale. The average cost for 20 companies during the first 4 months of 1934 was 3.3 cents per quart. While the details are not available, it was estimated by the designers that the net income also would be sufficient to retire the investment in existing plants in about 19 years.

"Although there are some indications that costs of operation under a well-managed unified system would tend to be lower than those prevailing under competitive operations, the differences in costs must be reconciled to the following:

"(*a*) While the estimated costs of operation under the proposed system represent the best judgment of the designers, there is no assurance that these estimates could be translated into actual operations. In this connection it should be pointed out that in certain aspects, particularly in the delivery function, the estimates may be insufficient to meet basic requirements.

"(*b*) The feasibility of introducing a system of country assembly into a market where the milk supply is obtained within a relatively short distance from the city, as well as the integration of a very large butter plant with a system designed primarily to provide for the fluid-milk requirements of the city, is open to serious question.

"(*c*) No details were given on the methods of financing the $5,100,000 plant and retiring the investment in the existing plants.

"(*d*) Successful operation of a centralized milk-processing and distributing system is largely dependent upon the efficiency of management and personnel. Regardless of whether it is operated under private or public management, considerable supervision would probably be necessary to safeguard the public interest. In the absence of restraint in conduct of management there would be no assurance that the quality of products would measure up to established standards, or that the prices charged consumers or paid producers would be reasonable."

Copies of the publication, entitled "A Survey of Milk Marketing in Milwaukee", may be obtained by writing to the Dairy Section, Division of Marketing and Marketing Agreements, Agricultural Adjustment Administration, Washington, D. C.

Hearing Held on Marketing Plan for Milk Sold in Louisville Area

A public hearing on a proposed marketing agreement and order for handlers of milk in the Louisville, Ky., marketing area was held July 1 at Louisville.

The hearing on the proposed marketing plan was requested by producers supplying handlers of milk operating in the Louisville marketing area.

Principal provisions of the proposed agreement and order govern the classification of milk into three classes according to its use by handlers, the establishment of minimum prices to producers for each class of milk, and the operation of a market-wide pool so that all producers supplying the market may receive uniform returns for their milk. Administration of the program would be through a market administrator.

The agreement and order as considered at the hearing would require handlers to pay producers the following minimum prices for milk delivered at the handler's plant:

For class 1 milk, not less than $2.65 per hundredweight.

For class 2 milk, $2 per hundredweight.

The price for class 3 milk would be calculated by the market administrator on the basis of the following formula: Four times the average price per pound of 92-score butter at wholesale in the Chicago market as reported by the United States Department of Agriculture for the delivery period during which the milk is purchased, plus 30 percent of the result.

Handlers would file with the market administrator reports showing their receipts and utilization of milk bought. From these reports the market administrator would compute and announce the uniform price per hundredweight of milk delivered to all handlers during each delivery period.

Agreement Program Regulations Suspended for California Citrus

Weekly regulations governing the volume of out-of-State shipments of California-Arizona oranges under the marketing agreement and order for that area have not been issued since the week beginning June 6. The present price situation in the California-Arizona orange-producing area is relatively satisfactory, largely because of sharp reductions in supplies available for markets. These reduced supplies are the result of the severe freeze in the area last January, which caused an estimated 40-percent reduction in the supply of merchantable fruit produced in the California-Arizona area during the current season.

The temporary halt in the establishment of weekly shipping regulations does not affect the provisions of the agreement and order, which continue in full force. The committees administering the marketing agreement program are continuing their functions in order that regulation of out-of-State shipments of oranges may be instituted without delay whenever conditions may require.

The California-Arizona citrus marketing agreement program has been in effect since December 1933 under the provisions of the Agricultural Adjustment Act.

Walnut Industry To Be Aided in Disposal of Surplus Holdings

An agreement between the Secretary of Agriculture and the California Walnut Growers' Association to encourage export sales and diversion to the shelling trade of surplus walnuts was announced today by the Agricultural Adjustment Administration.

The program under the agreement will be conducted under the provisions of section 32 of the 1935 amendments to the Agricultural Adjustment Act, which make available to the Secretary an amount equal to 30 percent of annual customs receipts for uses which include encouraging export sales and diversion to encourage domestic consumption.

Under the agreement the California Walnut Growers' Association agrees to shell or export 4 million pounds of merchantable grade walnuts of the 1936 crop, or earlier crops. Sales for export are to be made and the walnuts exported before November 1, 1937. Shelling is to be completed before October 1, 1937. Not more than 2 million pounds of the total involved in the program may be disposed of by shelling.

The agreement provides that the association is to be paid an amount equal to 5 cents per pound on all walnuts shelled or exported by it in accordance with the provisions of the agreement.

The program under the agreement is designed to assist the industry in removing a portion of existing surplus supplies into other than normal trade channels before the harvest of the 1937 crop. Reports indicate that unsold stocks of merchantable walnuts exceed 46,000 bags of 100 pounds each. Indications are that the 1937 crop of merchantable walnuts will exceed by more than 60,000 bags the largest previous production, which was in 1935.

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